

Gary M. Messing, No. 075363
Timothy K. Talbot, No. 173456
Stephanie A. Miller, No. 183809
CARROLL, BURDICK & McDONOUGH LLP
Attorneys at Law
1007 7th Street, Suite 200
Sacramento, CA 95814
Telephone: 916.446.5297
Facsimile: 916.446.4487

Attorneys for Plaintiffs JAIME HUGHES, et al.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAIME HUGHES, ET AL.,

Plaintiffs,

v.

CITY OF STOCKTON, ET AL.,

Defendants.

No. CIV.S-03 0166 MCE-DAD

**PLAINTIFFS' MOTION IN LIMINE TO
EXCLUDE DEFENDANT'S EXPERT
MARK COHEN**

DATE: June 28, 2005

TIME: 2:00 P.M.

COURTROOM: of Judge Morrison C.
England, Jr.

Complaint Filed: January 28, 2003

Trial Date: June 29, 2005

Pursuant to Federal Rules of Evidence 104, 403, and 702 and this Court's "gate-keeping" role under *Daubert* with respect to expert testimony, Plaintiffs, Virginia Cardoza, Mary Coronado, Kathi Lynn Coronado, Karen Delucchi, Jolene Gibson, Barbara Hedrick, Suzanne Henning, Jaime Hughes, Will Johnson, Maria Macias, Linda Mager, Audrey Mills, Mike Morrow, Candice Price, Virginia Ruiz, Carmen Simmons, Marina Torres, Treasa Tredwell, Sheila Wall and Lorie Weiss ("Plaintiffs"), hereby respectfully move this Court for an Order excluding testimony of and documents prepared by economist Mark Cohen ("Cohen") from this trial.

1 Cohen intends to opine that there is some kind of “effective wage” he has
2 calculated and that Plaintiffs’ annual compensation exceeds what they would have been
3 compensated according to his effective hourly rates. Cohen’s testimony is inadmissible
4 under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786
5 (1993), and Federal Rules of Evidence 104, 403 and 702 on the grounds that:

- 6 • Cohen’s testimony is inadmissible because he is not qualified to offer his
7 opinion,
- 8 • Cohen’s method of calculating an “effective rate” is unreliable as the lawful
9 calculation of overtime to which Plaintiffs’ are entitled is based on the
10 “regular rate” as defined specifically by 29 U.S.C. 8 207(a)(1) and (e), 29
11 C.F.R. 88778.107- 778.109,
- 12 • Cohen’s opinion is unreliable because it is based on incomplete
13 information, and
- 14 • Cohen’s method and conclusion do not fit the facts and material issues in
15 this case.

16 For these reasons, Cohen’s testimony and documents prepared by him will not
17 assist the trier of fact and should be excluded from this trial.

18 Dated: June 7, 2005

19 CARROLL, BURDICK & McDONOUGH LLP

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21 By /s/ Stephanie A. Miller
22 Stephanie A. Miller
23 Attorneys for Plaintiffs
24 JAIME HUGHES, et al.
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